

SUBCHAPTER L: PERMITS FOR SPECIFIC DESIGNATED FACILITIES
§§116.1400, 116.1402, 116.1404, 116.1406, 116.1408, 116.1410, 116.1414, 116.1416, 116.1418,
116.1420, 116.1422, 116.1424, 116.1426, 116.1428
Effective March 29, 2006

§116.1400. Purpose.

The purpose of this subchapter is to establish, by rule, reasonably streamlined procedures for the commission to issue authorization for projects within the commission's jurisdiction under Texas Health and Safety Code, Chapters 361 and 382 and Texas Water Code, Chapters 5 and 26.

Adopted February 22, 2006

Effective March 29, 2006

§116.1402. Applicability.

(a) This subchapter applies to applications for authorization required to construct and operate a component of the FutureGen project, and to applications to authorize modification of a component of the FutureGen Project.

(b) This subchapter does not apply to an application for a permit to construct or modify a new or existing coal-fired electric generating facility that will use pulverized or supercritical pulverized coal.

(c) This subchapter does not apply to any applications or other requests for authorization submitted after January 1, 2018.

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§116.1404. Permit Required.

Any person who plans to construct or modify a component of a project as designated in §116.1402 of this title (relating to Applicability) that may emit air contaminants into the air of this state must obtain a permit under this chapter or qualify for a permit by rule under Chapter 106 of this title (relating to Permits by Rule).

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§116.1406. Compliance History.

For all permit reviews under this subchapter, compliance history reviews are required under Chapter 60 of this title (relating to Compliance History).

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§116.1408. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **Clean coal project**--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term includes the construction or modification of a facility for electric generation, industrial production, or the production of steam as a byproduct of coal gasification to the extent that the facility installs one or more components of the FutureGen project.

(2) **Coal**--All forms of coal, including lignite.

(3) **Component of the FutureGen project**--A process, technology, or piece of equipment that:

(A) is designed to employ coal gasification technology to generate electricity, hydrogen, or steam in a manner that meets the FutureGen project profile;

(B) is designed to employ fuel cells to generate electricity in a manner that meets the FutureGen project profile;

(C) is designed to employ a hydrogen-fueled turbine to generate electricity where the hydrogen is derived from coal in a manner that meets the FutureGen project profile;

(D) is designed to demonstrate the efficacy at an electric generation or industrial production facility of a carbon dioxide capture technology in a manner that meets the FutureGen project profile;

(E) is designed to sequester a portion of the carbon dioxide captured from an electric generation or industrial production facility in a manner that meets the FutureGen project profile in conjunction with appropriate remediation plans and appropriate techniques for reservoir characterization, injection control, and monitoring;

(F) is designed to sequester carbon dioxide as part of enhanced oil recovery in a manner that meets the FutureGen project profile in conjunction with appropriate techniques for reservoir characterization, injection control, and monitoring;

(G) qualifies for federal funds designated for the FutureGen project;

(H) is required to perform the sampling, analysis, or research necessary to submit a proposal to the United States Department of Energy for the FutureGen project; or

(I) is required in a final United States Department of Energy request for proposals for the FutureGen project or is described in a final United States Department of Energy request for proposals as a desirable element to be considered in the awarding of the project.

(4) **Designated project**--Any project subject to the jurisdiction of the commission and designated by the legislature as subject to the alternate public notice requirements in this subchapter.

(5) **FutureGen project**--A common reference to the coal-based integrated sequestration and hydrogen project to be built in partnership with the United States Department of Energy.

(6) **FutureGen project profile**--A standard or standards relevant to a component of the FutureGen project, as provided in a final or amended United States Department of Energy request for proposals or contract.

(7) **Hearing**--A notice and comment hearing and not a contested case hearing.

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§116.1410. Emissions Profile for FutureGen Projects.

If the United States Department of Energy does not specify an emissions profile for the FutureGen project, emissions of air contaminants from a component of a FutureGen project shall equal no more than:

(1) 1% of the average sulphur content of the coal or coals used for the generation of electricity at the component;

(2) 10% of the average mercury content of the coal or coals used for the generation of electricity at the component;

(3) 0.05 pounds of nitrogen oxides per million British thermal units (MMBTU) of energy produced at the component; and

(4) 0.005 pounds of particulate matter per MMBTU of energy produced at the component.

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§116.1414. Applications for Facilities that are Components of a Designated Project.

Any application submitted under §116.1404 of this title (relating to Permit Required) must include a completed Form PI-1, General Application for Air Preconstruction Permits and Amendments. The Form PI-1 must be signed by an authorized representative of the applicant. The Form PI-1 specifies additional support information that must be provided before the application is deemed complete. In order to be granted a permit, the applicant for a project as designated in §116.1402(a) of this title (relating to Applicability) shall submit information to the commission that demonstrates that all of the following are met.

(1) Protection of public health and welfare. The emissions from the facility will comply with all applicable rules and regulations of the commission and with the intent of Texas Health and Safety Code, Chapter 382, the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people.

(2) Measurement of emissions. The permit will have provisions for measuring the emission of significant air contaminants as determined by the commission. These provisions may include the installation of sampling ports on exhaust stacks and construction of sampling platforms in accordance with guidelines in the "Texas Natural Resource Conservation Commission Sampling Procedures Manual," portable analyzers, or emissions calculations if a known process variable is monitored.

(3) New Source Performance Standards (NSPS). The emissions from each affected facility as defined in 40 Code of Federal Regulations (CFR) Part 60 will meet the requirements of any applicable NSPS as listed under 40 CFR Part 60, promulgated by the United States Environmental Protection Agency (EPA) under the authority granted under Federal Clean Air Act (FCAA), §111, as amended.

(4) National Emission Standards for Hazardous Air Pollutants (NESHAPs). The emissions from each facility as defined in 40 CFR Part 61 will meet the requirements of any applicable NESHAPs, as listed under 40 CFR Part 61, promulgated by EPA under the authority granted under FCAA, §112, as amended.

(5) NESHAPs for source categories. The emissions from each affected facility shall meet the requirements of any applicable maximum achievable control technology standard as listed under 40 CFR Part 63, promulgated by EPA under FCAA, §112, or as listed in Chapter 113, Subchapter C of this title (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA, §112, 40 CFR Part 63)).

(6) Performance demonstration. The facility will achieve the performance specified in the permit application. The commission may require the applicant to submit additional engineering data after the permit has been issued in order to demonstrate further that the facility will achieve the performance specified in the permit. In addition, the commission may require initial compliance testing to determine ongoing compliance through engineering calculations based on measured process variables, parametric or predictive monitoring, stack monitoring, or stack testing.

(7) Nonattainment review. A facility in a nonattainment area shall comply with all applicable requirements under Subchapter B, Division 5 of this chapter (relating to Nonattainment Review).

(8) Prevention of significant deterioration review. A facility in an attainment area shall comply with all applicable requirements under Subchapter B, Division 6 of this chapter (relating to Prevention of Significant Deterioration Review).

(9) Air dispersion modeling or ambient monitoring. The commission may require

computerized air dispersion modeling and/or ambient monitoring to determine the air quality impacts from the facility.

(10) Federal standards of review for constructed or reconstructed major sources of hazardous air pollutants. If the facility is an affected source as defined in §116.15(1) of this title (relating to Section 112(g) Definitions), the affected source shall comply with all applicable requirements under Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40 CFR Part 63)).

(11) Application content. In addition to any other requirements of this subchapter, the applicant shall:

- (A) identify each facility to be included in the permit;
- (B) identify the air contaminants emitted; and
- (C) provide emission rate calculations.

(12) Best available control technology (BACT). The proposed facility will utilize BACT, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

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§116.1416. Public Notice.

(a) The executive director shall direct the applicant to publish a notice of draft permit and preliminary decision, at the applicant's expense, in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The executive director shall direct the applicant to make a copy of the application and draft permit available for review and copying at a public place in the county in which the site is located or proposed to be located. The notice shall contain the following information:

- (1) the permit application number;
- (2) the applicant's or permit holder's name, address, and telephone number and a description of the manner in which a person may contact the applicant or permit holder for further information;
- (3) a description of the location of the site or proposed location of the site;
- (4) a description of the activity or activities involved in the permit application;
- (5) the location and availability of the following:

- (A) the complete permit application;
- (B) the draft permit;
- (C) all other relevant supporting materials in the public files of the agency;

(6) a description of the comment procedures, including the duration of the public notice comment period and procedures to request a hearing printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(7) a statement that a person who may be affected by the emission of air pollutants from the facility or facilities is entitled to request a notice and comment hearing, under §116.1418 of this title (relating to Public Participation), printed in a font style or size that clearly provides emphasis and distinguishes it from the remainder of the notice;

(8) a description of the procedure by which a person may be placed on a mailing list in order to receive additional information about the application or draft permit;

(9) if applicable, the time and location of any public meeting; and

(10) the name, address, and phone number of the commission to be contacted for further information.

(b) The applicant shall submit a copy of the public notice and date of publication to the executive director and any local air pollution control agencies having jurisdiction over the site.

(c) The applicant shall submit a statement to the executive director certifying that the sign required by subsection (e) of this section has been posted consistent with the provisions of that subsection.

(d) The executive director shall make available for public inspection the draft permit and the complete application throughout the comment period during business hours at the commission's central office and at the appropriate commission regional office where the site is located.

(e) At the applicant's expense, a sign shall be placed at the site declaring the filing of an application for a permit and stating the manner in which the executive director may be contacted for further information.

(1) The sign shall be provided by the applicant and shall substantially meet the following requirements.

(A) The sign shall consist of dark lettering on a white background and shall be not smaller than 18 inches by 28 inches and all lettering shall be no less than 1-1/2 inches in size and block printed capital lettering.

(B) The sign shall be headed by the words "PROPOSED AIR QUALITY PERMIT."

(C) The sign shall include the words "APPLICATION NO." and the number of the permit application.

(D) The sign shall include the words "for further information contact."

(E) The sign shall include the words "TEXAS COMMISSION ON ENVIRONMENTAL QUALITY," and the address of the appropriate commission regional office.

(F) The sign shall include the phone number of the appropriate commission regional office.

(G) The sign shall include the name of the company applying for the permit.

(2) The sign shall be in place by the date of publication of the newspaper notice and shall remain in place and legible throughout the period of public comment.

(3) The sign placed at the site shall be located at or near the site's main entrance, provided that the sign is legible from the public street. If the sign would not be legible from the public street, then the sign shall be placed within ten feet of a property line paralleling a public street.

(A) The executive director may approve variations, if the applicant has demonstrated that it is not practical to comply with the specific sign-posting requirements.

(B) Alternative sign-posting plans proposed by the applicant must be at least as effective in providing notice to the public.

(C) The executive director shall approve the variations before signs are posted.

(f) The executive director shall receive public comment for 30 days after the notice of the public comment period is published. During the comment period, any person may submit written comments on the draft permit.

(g) The draft permit may be changed based on comments.

(h) Bilingual public notice requirements of this subsection are applicable when either the elementary school or the middle school located nearest to the facility or proposed facility provides a bilingual education program as required by Education Code, Chapter 29, Subchapter B, and 19 TAC §89.1205(a) (relating to Required Bilingual Education and English as a Second Language Programs), or if either school received a waiver for a required bilingual education program under the provisions of 19 TAC §89.1205(g). Schools not governed by the provisions of 19 TAC §89.1205 shall not be considered in determining applicability of the requirements of this section. Elementary or middle schools that offer English as a second language under 19 TAC §89.1205(d), and are not otherwise

affected by 19 TAC §89.1205(a), will not have to meet the requirements of subsection (a) of this section. If the notices required by this section and §116.1418 of this title are combined, the combined notice is subject to the requirements of this section. Each affected facility shall meet the following requirements.

(1) At the applicant's expense, an additional notice shall be published at least once in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the notice shall be published in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(2) Each notice under this subsection shall be published in a newspaper or publication that is published in the alternate language in which public notice is required.

(3) The newspaper or publication must be of general circulation in the municipality or county in which the facility is located or proposed to be located.

(4) The requirements of this section are waived for each language in which no publication exists, or if the publishers of all alternate language publications refuse to publish the notice.

(5) Notice under this subsection shall only be required to be published within the United States.

(6) If the alternate language publication is published less frequently than once a month, this notice requirement may be waived by the executive director on a case-by-case basis.

(7) Each alternate language publication shall follow the requirements of this section not otherwise inconsistent with this subsection.

(8) At the applicant's expense, an additional sign shall be posted at the site in each alternate language in which the bilingual education program is taught. If the nearest elementary or middle school received a waiver for the requirements of 19 TAC §89.1205(a) under 19 TAC §89.1205(g), the alternate language signs shall be posted in the alternate languages in which the bilingual education program would have been taught had the school not received a waiver for the bilingual education program.

(9) The alternate language signs shall be posted adjacent to each English language sign required in public notice.

(10) The alternate language signs shall meet all other requirements of this section.

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§116.1418. Public Participation.

(a) With the exception of the permitting procedural requirements specified in any other chapter of this title, permits authorized under this subchapter are not subject to the requirements relating to a contested case hearing under Texas Health and Safety Code, Chapter 382; Texas Water Code; or Texas Government Code, Chapter 2001, Subchapters C - G. Permit applications under this chapter shall be subject to a notice and comment hearing as specified in subsections (b) - (n) of this section, as well as any applicable requirements in Chapters 39 and 55 of this title (relating to Public Notice and Requests for Reconsideration and Contested Case Hearings; Public Comment).

(b) Any hearing regarding a permit will be conducted under the procedures in this section and not under the Administrative Procedure Act.

(c) Any person who may be affected by emissions from a site regulated under this subchapter may request the executive director to hold a hearing on the draft permit. The request must be made during the 30-day public comment period.

(d) The executive director shall decide whether to conduct a hearing. The executive director is not required to hold a hearing if the basis of the request by a person who may be affected by emissions from a site is determined to be unreasonable. If a hearing is requested by a person who may be affected by emissions from a site regulated under this subchapter, and that request is reasonable, the executive director shall conduct a hearing.

(e) At the applicant's expense, notice of a hearing on a draft permit must be published in the public notice section of one issue of a newspaper of general circulation in the municipality in which the site or proposed site is located, or in the municipality nearest to the location of the site or proposed site. The notice must be published at least 30 days before the date of the hearing. The notice must include the following:

- (1) the time, place, and nature of the hearing;
- (2) a brief description of the purpose of the hearing; and
- (3) the name and phone number of the commission to be contacted to verify that a hearing will be held.

(f) The applicant shall submit a copy of the notice of hearing and date of publication to the executive director and all local air pollution control agencies having jurisdiction in the county in which the site is located.

(g) At the executive director's discretion, the hearing notice may be combined with the notice of the draft permit required by this subchapter.

(h) Any person, including the applicant, may submit oral or written statements and data concerning the draft permit.

- (1) Reasonable time limits may be set for oral comments, and the submission of

comments in writing may be required.

(2) The period for submitting written comments is automatically extended to the close of any hearing.

(3) At the hearing, the period for submitting written comments may be extended beyond the close of the hearing.

(i) A tape recording or written transcript of the hearing must be made available to the public.

(j) Any person, including the applicant, who believes that any condition of the draft permit is inappropriate or that the preliminary decision to issue or deny the permit is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting that position by the end of the public comment period.

(k) The executive director shall keep a record of all comments received and issues raised in the hearing. This record must be made available to the public.

(l) The draft permit may be changed based on comments.

(m) After the public comment period or the conclusion of any notice and comment hearing, the chief clerk of the commission shall send by first-class mail the executive director's decision, the executive director's response to any comments submitted during the comment period or at the public hearing specified in this section, and identification of any change in the condition of the draft permit and the reasons for the change to any person who commented during the public comment period or at the hearing, and to the applicant.

(n) The commission shall use public meetings, informal conferences, or advisory committees to gather the opinions and advice of interested persons for all permits issued under this subchapter.

(1) Any public meetings held in accordance with this subsection shall follow the notice and comment hearing procedures in subsection (a) - (m) of this section.

(2) The executive director shall hold a public meeting:

(A) on the request of a member of the legislature who represents the general area in which the facility is located or proposed to be located; or

(B) if the executive director determines that there is substantial public interest in the proposed activity.

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§116.1420. Permit Fee.

(a) Fees required. Any person who applies for a permit under this subchapter must remit a fee as provided in Chapter 116, Subchapter B, Division 4 of this title (relating to Permit Fees) at the time of application for such permit.

(b) Payment of fees. All permit fees must be remitted in the form of a check or money order made payable to the "Texas Commission on Environmental Quality" and delivered to the Texas Commission on Environmental Quality, P. O. Box 13088, MC 214, Austin, Texas 78711-3088. Required fees must be received before the commission will begin examination of the application.

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§116.1422. General and Special Conditions.

(a) Permits issued under this subchapter may contain general and special conditions. The holders of a permit under this subchapter shall comply with any and all such conditions.

(b) Holders of permits issued under this subchapter shall comply with the following general conditions, regardless of whether they are specifically stated within the permit document.

(1) Report of construction progress. The permit holder shall report start of construction, construction interruptions exceeding 45 days, and completion of construction. The report shall be given to the appropriate regional office of the commission not later than 15 working days after occurrence of the event.

(2) Startup notification.

(A) The permit holder shall notify the appropriate regional office of the commission, and any local air pollution control agencies having jurisdiction, prior to the commencement of operations of the facilities authorized by the permit. The notification must be made in such a manner as to allow a representative of the commission and a representative of any local air pollution control agency having jurisdiction to be present at the commencement of operations.

(B) The permit holder shall provide a separate notification for the commencement of operations for each unit of phased construction, which may involve a series of units commencing operations at different times.

(C) Prior to operation of the facilities authorized by the permit, the permit holder shall identify to the commission's Office of Permitting, Remediation, and Registration the source or sources of allowances to be utilized for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program).

(3) Sampling requirements.

(A) If sampling is required, the permit holder shall contact the commission's Office of Compliance and Enforcement prior to sampling to obtain the proper data forms and

procedures.

(B) All sampling and testing procedures must be approved by the executive director and coordinated with the appropriate regional office of the commission.

(C) The permit holder is also responsible for providing sampling facilities and conducting the sampling operations, or contracting with an independent sampling consultant.

(4) Equivalency of methods. The permit holder must demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the permit. Alternative methods shall be applied for in writing and must be reviewed and approved by the executive director prior to using these methods in fulfilling any requirements of the permit.

(5) Recordkeeping. The permit holder shall:

(A) maintain a copy of the permit along with records containing the information and data sufficient to demonstrate compliance with the permit, including production records and operating hours;

(B) keep all required records in a file at the facility site. If, however, the facility site normally operates unattended, records must be maintained at an office within Texas having day-to-day operational control of the facility site;

(C) make the records available at the request of the executive director or any local air pollution control agency having jurisdiction over the site. Upon request, the commission shall make any such records of compliance available to the public in a timely manner;

(D) comply with any additional recordkeeping requirements specified in special conditions attached to the permit;

(E) retain information in the file for at least two years following the date that the information or data is obtained; and

(F) for persons certifying and registering a federally enforceable emission limitation in accordance with §116.611 of this title (relating to Registration To Use a Standard Permit), retain all records demonstrating compliance for at least five years.

(6) Maximum allowable emission rates. The total emissions of air contaminants from any of the sources of emissions must not exceed the values stated on the table attached to the permit entitled "Emission Sources--Maximum Allowable Emission Rates."

(7) Maintenance of emission control. The permitted facilities shall not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. The permit holder shall provide notification

for emissions events and maintenance in accordance with Chapter 101, Subchapter F of this title (relating to Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities).

(8) Compliance with rules.

(A) Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Health and Safety Code, Chapter 382, Texas Clean Air Act, and the conditions precedent to the granting of the permit.

(B) If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition shall govern and be the standard by which compliance shall be demonstrated.

(C) Acceptance includes consent of the executive director to the entrance of commission employees and agents into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the permit.

(c) Special conditions. The holders of permits issued under this subchapter shall comply with all special conditions contained in the permit document.

(1) Special conditions may be attached to a permit that are more restrictive than the requirements of this title.

(2) Special conditions for written approval.

(A) The executive director may require as a special condition that the permit holder obtain written approval before constructing a source under:

(i) a standard permit in accordance with Subchapter F of this chapter (relating to Standard Permits); or

(ii) a permit by rule in accordance with Chapter 106 of this title (relating to Permits by Rule).

(B) Written approval may be required if the executive director specifically finds that an increase of a particular pollutant could either:

(i) result in a significant impact on the air environment; or

(ii) cause the facility to become subject to review in accordance with:

(I) Subchapter C of this chapter (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (FCAA, §112(g), 40

CFR Part 63)); or

(II) the provisions in Subchapter B, Divisions 5 and 6 of this chapter (relating to Nonattainment Review and Prevention of Significant Deterioration Review).

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§116.1424. Amendments and Alterations of Permits Issued Under This Subchapter.

The owner or operator planning the modification of a facility permitted under this subchapter must comply with the requirements of Subchapter B of this chapter (relating to New Source Review Permits) before work begins on the construction of the modification. Amendments and alterations for permits issued under this subchapter are subject to the requirements of Subchapter B of this chapter, except that the public notice and public participation requirements of this subchapter shall apply instead of any public notification or public comment procedures required by Subchapter B of this chapter.

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§116.1426. Renewal of Permits Issued Under This Subchapter.

Permits issued under this subchapter shall be renewed in accordance with the requirements of Subchapter D of this chapter (relating to Permit Renewals).

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§116.1428. Delegation.

The commission delegates to the executive director the authority to take any action on a permit issued under this subchapter.

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